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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 93-129

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In the Matter of)
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In the Matter of 800 Data Base)
Access Tariffs and the 800)
Service Management System Tariff)
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Northern Telecom Reply to the
Opposition to Application for Review

Northern Telecom Inc. ("Northern Telecom"), through its counsel, hereby replies to the opposition to the local exchange carriers' application for review of the Bureau's January 31 Order.^{1/} The application for review seeks relief from the decision denying a waiver of the requirement that the carriers file certain costing models in the Commission's investigation of the 800 Data Base Access Tariffs for public review subject to "protective agreements," or utilizing non-proprietary cost support material.

Northern Telecom manufactures, sells and services telecommunications equipment to the local exchange carrier ("LEC") industry, including the Service Control Point equipment

^{1/} 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, DA 94-99, released January 31, 1994.

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utilized for the 800 Data Base services at issue in this proceeding. Northern Telecom currently has telecommunications products in-service in each of the fifty (50) states. Northern Telecom has participated in this and previous proceedings in order to protect the confidentiality of proprietary information it allows the LECs to use in their costing models.

In the January 31 Order, the Bureau appears to have recognized the highly confidential nature of the vendor information, including information furnished by Northern Telecom, that is incorporated into the costing models at issue in this proceeding.^{2/} Nevertheless, the Bureau declined to apply the same procedures used in the ONA Tariff Investigation, believing that the LECs could develop cost support that does not depend on proprietary information. Alternatively, the Bureau requires the filing of the cost models, including all "relevant information," subject to protective agreements which would provide "reasonable access" to the information.^{3/}

^{2/} January 31 Order at paras. 12-13. This is consistent with Northern Telecom's position, and consistent with the Commission's decision in the ONA Tariff Investigation. E.g., Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs (Application for Review), 9 FCC Rcd 180 (1993) ("ONA Investigation Waiver Order") at para. 12. In that decision, the Commission upheld the reasonableness of the restrictive access, including redactions and on-site review only, indicating: "We conclude that a simple nondisclosure agreement alone is not sufficient to protect the vendors' interests. . . . Therefore, it is reasonable to restrict intervenors' ability to see any additional information, even though they have signed nondisclosure agreements."

^{3/} January 31 Order at para. 15.

In this proceeding it appears that the Bureau has rejected the approach adopted by the Commission in the ONA Tariff Investigation pursuant to which, first, significant switch vendor information was permitted to be redacted from the cost models prior the models being made available to the parties and, second, the remaining switch vendor information was subject to a restrictive protective arrangement.^{4/} In the Oppositions to the Application for Review, the position has been taken that a protective order is adequate to safeguard sensitive information.^{5/}

Despite these assertions by the Bureau and in the Oppositions, Northern Telecom remains concerned that a protective agreement may not prevent it from experiencing competitive harm as a result of highly sensitive information being revealed to its competitors and customers. Disclosure of its proprietary information to the customers and/or competitors, even if the employees of the recipient execute a confidentiality agreement, will not adequately protect its interests. Our concern in this regard stems from several factors, including the highly sensitive nature of the information, the role of some of those parties as customers or competitors of Northern Telecom, potential

^{4/} Cf., January 31 Order at para. 14: "The LECs have failed to demonstrate that using the ONA approach is reasonable in this case."

^{5/} See e.g., Opposition of National Data Corporation at p. 5.

enforcement difficulties, and the movement of employees amongst different divisions of those companies.^{6/}

The crux of the Bureau's position in this proceeding appears to be that this proceeding is different from the ONA Tariff Investigation and, therefore, the Bureau is justified in adopting an alternative which affords less protection to the switch vendors' information. However, as Northern Telecom indicated in its comments on the Designation Order in this proceeding (8 FCC Rcd 5132 (1993)), the same types of switch vendor information which were at issue in the ONA proceeding and which resulted in the appropriate protections established in that proceeding are also at issue in the instant proceeding. Consequently, the potential competitive damage to switch vendors such as Northern Telecom if their confidential information was improperly disclosed are no different than the damages that would have occurred in the ONA proceeding. The Commission should recognize the same concerns in this proceeding.

Northern Telecom appreciates the Commission's and the customers' interest in assuring meaningful participation in the tariff review process. On the other hand, Northern Telecom is very concerned because it could be severely harmed by inappropriate disclosure of the highly confidential information it provides to the LECs for use in the costing models. Northern Telecom remains willing to meet with the Commission and other

^{6/} Indeed, in the ONA Tariff Investigation the Commission concluded that a non-disclosure agreement alone was insufficient to protect the vendors' interests. ONA Investigation Waiver Order at para. 13, cited in the January 31 Order at para. 13.

appropriate parties in order to develop adequate safeguards, and believes, based on its experiences in the ONA Tariff Investigation, that such an effort would prove fruitful.

Respectfully submitted,

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